ates with the creditor in that capacity, he will seldom, if ever, be allowed to plead that he has not assented to the variation in his capacity as a guarantor but only in his capacity as a director of the principal debtor: see Mahon J. in *Winstone Ltd.* v. *Bourne*[6] at page 96.

The defendant's counsel also submitted that the condition of payment into court or providing security for the full amount of the claim (S$2,172,026.19) had the practical result of unjustly depriving and actually deprived the defendant of his defence as judgment in default had been entered against the defendant. Save for this submission on the effect of the defendant's non-compliance, the defendant has not produced any evidence of his financial circumstances to enable me to determine the cause of non-compliance. The evidence on record suggests the defendant might not be lacking in financial resources. The telex sent by Ramesh Mahboobani, a director of Tharoomals, on April 1, 1985 which is reproduced below, reads:

"MR AHUJA IS VERY MUCH ANNOYED ON YR IRRESPONSIBLE BEHAVIOUR. FOR NO REASON I HV TO LISTEN TO HIM DUE TO YR WRONG ACTION. YOU FINALISED DEAL N ASKED ME TO REMIT ENTIRE SALE PROCEEDS OF GOODS COVERED BY THOSE L/CS TO YOU. PL REMIT FUNDS BACK TO ENABLE ME TO SETTLE ISSUE IMMEDIATELY AS OTHERWISE SITUATION IS BECOMING VERY CRITICAL".

I will now refer to one other matter which has some bearing on the defendant's mode of presenting his case. Before me, his counsel adopted a form of argument which could have had some effect in the rush to judgment but not otherwise. One example which I have already referred to is the argument that because the plaintiff did not make a debit entry in the running account, there could not have been agreement to vary the Agreement by the temporary use of the credit in the running account. Another example is the argument that as the plaintiff had not given his explanation for or denied the acceptance of HK$10,000 credit note, it must follow that the defendant's explanation for the credit note (*i.e.* it was given as security for the 200 VCRs) was the truth. Finally, it was also suggested that because the defendant had failed to comply with the condition of payment into court or providing security, it followed that he did not have sufficient financial resources to do so and was therefore unjustly deprived of his defence. It seems to me that any defendant who has to rely on so many *non-sequiturs* is not likely to have much of a defence on the merits.

Taking into account all the circumstances of this case, I am of the view that the defence is shadowy and that there is something suspicious in the defendant's mode of presenting his case. Accordingly, I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Prakash Gurbani & Chong; Freshfields.*

TEO TIO KHIANG & ANOR v. OOI ENG TEONG

[O.C.J. (Lai Kew Chai J.) July 31, 1986]

[Singapore – Suit No. 1258 of 1982]

Tort – Negligence – Liability – Quantum of damages.

Damages – Brain – Severe damage to – Gross intellectual deterioration and personality changes – Clavicle fracture – Quantum.

Road Traffic – Collision between motor cycle and motor pick-up –Negligence – Liability – Quantum of damages.

On the morning of December 9, 1980 the 1st plaintiff, who was riding a motor cycle with his wife (2nd plaintiff) as pillion rider, had a collision with a motor pick-up driven by the defendant. As a result the 2nd plaintiff suffered severe brain damage by reason of which she underwent gross intellectual deterioration and personality changes. The 2nd plaintiff also suffered a fracture of the right collar bone.

At the time of the accident, the 2nd plaintiff was 21 years old and a mother of two children. She was working as a production operator in a factory. According to the plaintiffs the accident was caused entirely by the negligence of the defendant who, on the other hand claimed that the plaintiffs were responsible for their own misfortune or alternatively were respectively 35% and 20% contributorily negligent.

Held: (1) the defendant was entirely to be blamed for the accident;

(2) damages were awarded as follows:

Pain and suffering and loss of amenities (inclusive of clavicle fracture)	$70,000
Actual loss of earnings	$20,850
Loss of future earnings	$57,600
Losses of CPF contributions would be allowed for actual and future earnings at official rates	
Claims for domestic help (past and future)	$37,228;

(3) interest on general damages of $70,000 at 6% per annum and on the actual loss of earnings, the CPF contributions, and expenses for domestic help at 3% per annum;

(4) the first plaintiff is awarded $500 damages for pain and suffering for his relatively minor injuries.

Cases referred to:

(1) *Kow Ah Dek & Anor.* v. *K. Ratnasingam* [1981] 2 M.L.J. 24-26.
(2) *Liong Thoo* v. *Sawiyah & Ors.* [1982] 1 M.L.J. 286-288.
(3) *Santokh Singh* v. *Singapore Bus Service* [1982] 2 M.L.J. xlviii.
(4) *Chan Kam Lan* v. *Ong Lean Kee* [1979] 1 M.L.J. xxxviii.
(5) *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.* [1984] 1 M.L.J. 325.
(6) *Lee Soon Beng* v. *Wee Tiam Sing* [1986] 2 M.L.J. 340.

CIVIL SUIT.

Joe Chellam (*Tharnapathy Naidu* with him) for the plaintiffs.

B. Rao (*Raymond Chan* with him) for the defendant.

Cur. Adv. Vult.

Lai Kew Chai J.: At the crack of dawn on December 9, 1980 the first plaintiff, who was riding motor cycle AX 2820 with his wife, the second plaintiff, as pillion rider had a collision with motor pick-up GE 8192S driven by the defendant. As a result, the second plaintiff suffered severe brain damage by reason of which she underwent gross intellectual deterioration and personality changes. According to plaintiffs the accident was caused entirely by the negligence of the defendant who, on the other hand, claimed that plaintiffs were responsible for their own misfortune or, alternatively, were respectively 35% and 20% contributorily negligent.

The accident occurred near the mouth of the sliproad from Upper Thomson Road, which had three lanes, leading to Marymount Road. According to the first plaintiff, he was travelling along Upper Thomson Road on his way to the Toa Payoh Hospital as his wife needed medical attention. He was travelling on the second lane, close to the first lane. At that time a major portion of the first lane was under repair. The first plaintiff said in evidence that defendant's pick-up had come from Lornie Road and was travelling between the second lane and the third lane when it was first sighted by him. Intending to turn left into the sliproad the defendant overtook the motor cycle and then swerved left into his path. Inevitably, a collision occurred; the right handle bar of the motor cycle caught the nearside rear view mirror of the pick-up and both plaintiffs were thrown off the motor cycle.

On the other hand, defendant said in evidence that having purchased fish from the Jurong Fishing Port in the small hours of that morning he had come onto Upper Thomson Road on his way to Ang Mo Kio market and was travelling in the middle lane at all material times when the motor cycle, which he had sighted from the nearside rear view mirror moments earlier, attempted to overtake him from his left. In the process the right handle bar of the motor cycle caught the nearside rear view mirror of the pick-up. As a result, the plaintiffs were thrown off their motor cycle. In his police report he stated that since he had intended to turn left, he had switched on his signal. He said: "At the time of the accident, my vehicle was very slightly slanted to the left and I had yet to make the turn yet." In the course of his evidence, the defendant stoutly maintained that he had stayed in the middle of the second lane and that he had not begun to make the turn to the left.

On a balance of probabilities and having heard and seen the witnesses, I accept the first plaintiff's version as to how the accident occurred. I find that the defendant had overtaken the plaintiffs and attempted to turn into the sliproad thereby incommoding the first plaintiff by his change of direction. He admitted he had seen the plaintiffs and yet he made the left turn causing the accident. The pick-up was slanted towards the sliproad, as was confirmed by the sketch plan and the evidence of the son of the defendant. The defendant was accused by the Traffic Police of having turned left and cutting across the path of the first plaintiff. He compounded the offence by paying $50 and explained that he had done so on the advice of his insurance company. I did not find his explanation acceptable. Counsel for defendant submitted that the evidence of the first plaintiff was riddled with inconsistencies as regards the path of the pick-up and the point of impact. They were not inconsistencies at all. It was also submitted that on the first plaintiff's version the collision should have been between the front of the motor cycle and the nearside body portion of the pick-up. I do not think that this must inevitably be so. There is nothing improbable in the story of the first plaintiff. It was also said that the first plaintiff was a provisional licence holder and that the second plaintiff had voluntarily assumed the risk. There was no evidence that the first plaintiff was unable or unlikely to exercise the normal standards of

reasonable care when riding the motor cycle, notwithstanding the fact that he was not licensed to carry a pillion rider. On the contrary, I gathered the impression that he was in control of the motor cycle and in spite of his evasive action, he could not avoid the pick-up which had cut into his path. I therefore conclude that the defendant was entirely to blame for the accident.

I now turn to the claims for damages and interest. The second plaintiff, who was 21 years old and a mother of two children at the time of the accident, suffered a fracture of the right collar bone and severe brain damage. In consequence of the brain damage, she suffered (a) gross intellectual deterioration and (b) personality changes. Dr. R Nagulendran, a consultant psychiatrist, expressed the uncontroverted opinion that her memory function was impaired. Her speech was childish and she would not be able to undertake any task which would involve initiative. She could achieve sufficient stability such that she could be left alone, say in a flat, without doing anything silly. Although she did not require constant supervision she could not be left alone for any extended period. With an I.Q. level of between 50 - 70 she was like a retarded child and needed supervision. There was some improvement in her personality changes. She had become less aggressive and destructive and could be taught to carry out simple duties under supervision. It was clear that she was and always will be unemployable. Relying on *Kow Ah Dek & Anor* v. *K Ratnasingam*[1] and *Liong Thoo* v. *Sawiyah & Ors.*[2] counsel for the second plaintiff submitted that an award of $90,000 would be appropriate for pain and suffering and loss of amenities. It was also claimed for second plaintiff that the clavicle fracture should separately attract an award of $4,500 on the authority of *Santokh Singh* v. *Singapore Bus Service.*[3]

Counsel for defendant relied on *Chan Kam Lan* v. *Ong Lean Kee*[4] where for a more severe residual brain injury the award was $50,000 inclusive of the claim for a compound fracture of the right tibia. He submitted that allowing for inflation this item should be no more than $60,000, inclusive of the clavicle fracture. Having regard to the differences between the injuries in the instant case and those reported in the cases cited by both sides, I award $70,000 under this head inclusive of the clavicle fracture.

With regard to actual and future losses of earnings, second plaintiff was working as a Production Operator in a factory. Between September 1980 and January 1981 she averaged $322.39. However, her productivity was too low at work and having regard to her disinclination to acquire new skills, as can be seen from her employment history, I accept defence submission that the multiplicand for both actual and future loss of earnings should be $300 per month.

With regard to the multiplier I would think that on the facts of this case and the trend in the well-known authorities, including *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.*[5] it should be 16 years.

Therefore, the amount to be awarded for actual loss of earnings is $300 per month calculated from mid-February 1981 up to July 1986, inclusive of the four 13th months in 1982 to 1985, totalling, *i.e.* $300 x 69½ months, $20,850.

So far as the amount for loss of future earnings is concerned, it works out at $57,600.

As far as losses of CPF contributions are concerned, these will be allowed for actual and future earnings at the official rates.

Turning to the claims for domestic help, the facts are these. The sister of the second plaintiff, Teo Lee Ngoh, gave up her job from which she was earning $350 per month and looked after the second plaintiff and the children up to her marriage in March 1983. The first plaintiff paid her $250 per month for her services. Thereafter another sister took over the duties and continued to do so up to the trial and was paid $350 per month. I therefore allow the second plaintiff's claims for domestic help at an average of $275 per month from December 1980 up to the end of July 1986, totalling, *i.e.* $275 x 68 months, $18,700. As for future domestic help, I accede to the submission of counsel for the second plaintiff and allow this item at the reduced rate of $200 per month for 10 years on an annuity basis totalling $18,528.00.

With regard to the claim for interest, I will exercise my discretion and in line with the decision of the Court of Appeal in *Lee Soon Beng* v. *Wee Tiam Sing*[6] award interest on (a) the general damages of $70,000 at 6% per annum calculated from 13 May 1982, on which the Defence and Counterclaim was filed, up to date hereof; and (b) the actual loss of earnings, the CPF contributions and the expenses for domestic help which would have been earned or were incurred respectively since the accident in December 1980 calculated at

3% per annum, being half the rate of 6% per annum seeing that these items would have been earned or were incurred from month to month from February 1981 (taking into account the fact that second plaintiff had received remuneration up to mid February 1981).

I also award the first plaintiff $500 for pain and suffering for his relatively minor injuries. I will also award costs to the second plaintiff. As for the costs of the first plaintiff, I will hear arguments in chambers.

There will be judgment accordingly.

[*Editorial Note:* On the hearing in chambers the following Rider was included] –

"Mr Chellam: I am not asking for costs for 1st plaintiff. But I ask for costs of the counterclaim.

Court: The counterclaim is dismissed with no order as to costs because the issues were so intertwined that a separate order for costs is unnecessary. Usual consequential orders. Liberty to apply.

Intl: Lai J."

Order accordingly.

Solicitors: *T.U. Naidu & Co; Niru & Co.*

SENGOL v. DE WITT

[A.C.J. (Chan Sek Keong, J.C.) July 31, 1986]

[Singapore – M.C. Appeal No. 44 of 1985]

Family Law – Maintenance – Whether a nominal sum can be paid – Maintenance order – Effect of – Application of 1/3 rule – Women's Charter (Cap. 47), ss. 60, 68 & 102.

The complainant, a police constable, married the respondent/appellant, a flight steward with Singapore Airline Limited (hereinafter called "SIA") on March 14, 1984. After the marriage she applied for and was allocated a Housing Board flat ("HDB flat") under the Police scheme. But the couple, owing to certain differences concerning the renovation of the HDB flat and other matters never resided there. Instead a room was rented from October 1984 at $300 per month in a building in River Valley Road and this was their matrimonial home. The couple began to live apart from December 1984 as they could not reconcile their differences although according to the complainant the respondent only stopped staying with her from April 1985, as from which date the respondent neglected to maintain her.

On August 24, 1985, the Magistrate ordered the respondent to pay to the complainant a monthly sum of $350 as maintenance with effect from June 14, 1985, the date of the filing of the application for maintenance. The respondent appealed. In his appeal, the respondent contended that first the order of the Magistrate was wrong in that the amount of maintenance should be nominal and secondly that the maintenance order should have taken effect from the date when the order was actually made *i.e.* August 24, 1985 and not from the date of the application.

In the course of the appeal, counsel for the complainant produced a letter dated June 13, 1986 from the CPF Board which disclosed that a sum of $11,228.50 had been withdrawn by the complainant to purchase the HDB flat, and that only a balance of $3,987.00 had been paid back to the Central Provident Fund Board for her account after the surrender of the HDB flat. In other words, she had lost $7,241.50. Counsel informed that the complainant had been forced to surrender the HDB flat because she could not afford to complete the purchase or to maintain it due to the separation.

Held, varying the order of the Magistrate: (1) the loss of $7,241.50 was relevant in determining whether the complainant was entitled to maintenance and, if so, how much should be ordered and how it should be paid

(2) here the wife has lost not only the HDB flat which would have been her matrimonial home (but for the separation due to the conduct of the respondent) but also a considerable part of her CPF savings. It was a real loss of an existing financial resource even though it was not available to her for immediate use;

(3) the principle in *Hayes* v. *Hayes*[11] *i.e.* "where there was a very short marriage between two young persons, neither of whom had been adversely affected financially by the consequences of the marriage and each was fully capable of earning his or her own living, the approach which the court should adopt was to allow the party who was in weaker financial position (usually the wife) to adjust herself to her situation and thereafter to achieve a "clean break" facilitated if necessary by a small lump sum" should be applied to this case in favour of the complainant in order to allow her to adjust to the situation;

(4) it was within the power of the Magistrate to make an order with effect from April 1985 rather than June 14, 1985;

(5) the complainant is ordered to be paid $300 per month by the respondent for a period of two years commencing from June 14, 1985 up to June 14, 1987.

Cases referred to:

(1) *Attwood* v. *Attwood* [1968] 3 All E.R. 385.
(2) *Rodewald* v. *Rodewald* [1977] 2 All E.R. 609.
(3) *Slater* v. *Slater* [1982] 3 F.L.R. 364; 12 Fam. Law 153.
(4) *Wachtel* v. *Wachtel* [1973] 1 All E.R. 829.
(5) *Raquiza* v. *Raquiza* [1947] M.L.J. 202.
(6) *Graves* v. *Graves* [1973] 117 Sol. J. 679.
(7) *Khan* v. *Khan* [1980] 1 All E.R. 497.
(8) *Soni* v. *Soni* [1984] F.L.R. 294; 14 Fam. Law 268.